

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

| | | |
|----------------------------------|---|--------------------|
| UNITED STATES OF AMERICA, |) | CASE NO. 8:09CR139 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| CARLOS ENRIQUE GUERRERO |) | FINAL ORDER |
| HERNANDEZ and JORGE ALBERTO LOZA |) | OF FORFEITURE |
| GUTIERREZ, |) | |
| |) | |
| Defendants. |) | |

This matter is before the Court on the United States' Motion for Issuance of Final Order of Forfeiture (Filing No. 80) filed as to the Defendants, Carlos Enrique Guerrero Hernandez and Jorge Alberto Loza Gutierrez.¹

Count V of the Second Superseding Indictment charges Hernandez with criminal forfeiture. Count V pertains to 3 property items,² including “a 1996 Ford Taurus 4-door vehicle.” (Filing No. 37.) The plea agreement refers the vehicle as it is described in the Indictment. (Filing No. 62.) The Judgment describes the vehicle as a “1996 Ford Taurus.” (Filing No. 71.) The motion and order for preliminary forfeiture, drafted by a member of the United States Attorney’s Office, refer to the “1996 Ford Taurus 4-door vehicle.” (Filing No. 73.) The motion for final forfeiture addresses “a **1996** Ford Taurus 4-door vehicle, VIN

¹Although the motion is captioned only with Hernandez's name, the motion was filed with the CM/ECF System as a motion that pertains to, and therefore must be disposed of with respect to, both Defendants. Gutierrez has not yet appeared in this Court, and therefore the motion is denied without prejudice with respect to Gutierrez. Further discussion of the motion within this order will relate only to Hernandez.

²Count VI of the Second Superseding Indictment (“Indictment”) also charges Hernandez with criminal forfeiture of an “RG Ind. Inc., model RG42 .25 caliber pistol.” (Filing No. 37.) The pistol, together with the other property items listed in Count V, are included in the plea agreement, Judgment, and preliminary forfeiture proceedings. However, only the Ford Taurus is mentioned in the motion and proposed order for final forfeiture submitted by the U.S. Attorney’s Office. Therefore, further discussion in this order only addresses that vehicle.

IFALP52U7TA112157.”³ (Filing No. 80 (emphasis added).) The accompanying notice of publication states that notice was published on the appropriate government website of the potential forfeiture of a “**2009** Ford Taurus Passenger VIN# 1FALP52U7TTA1112157.” (Filing No. 79.) The proposed order for final forfeiture refers to a “**1996** Ford Taurus 4-door vehicle, VIN IFALP52U7TA112157.”

Because of the differences in the year and the VIN number of the vehicle in question, the government has not succeeded in establishing the required nexus between the property and the offense. Fed. R. Crim. P. 32.2(b)(1)(A). The motion is denied without prejudice as to the Defendant, Carlos Enrique Guerrero Hernandez.

IT IS ORDERED:

1. The United States' Motion for Final Order of Forfeiture (Filing No. 80) is denied without prejudice, as premature, with respect to the Defendant, Jorge Alberto Loza Gutierrez; and
2. The United States' Motion for Final Order of Forfeiture (Filing No. 80) is denied without prejudice, in light of the government's failure to establish the required nexus, with respect to the Defendant, Carlos Enrique Guerrero Hernandez.

DATED this 28th day of July, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

³The motion for final forfeiture is the first time the VIN number is provided for the vehicle.